

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Residential Building Contractor's License of Donald A. Nelson, Individually and d/b/a Don Nelson Builders and Remodelers

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above matter came on for a Prehearing Conference before Administrative Law Judge Richard C. Luis at 3:30 p.m. on March 10, 2006, at the Office of Administrative Hearings in Minneapolis. Michael J. Tostengard, Assistant Attorney General, 1200 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2130 appeared on behalf of the Minnesota Department of Labor and Industry ("Department"). There was no appearance by or on behalf of the Respondent, Donald A. Nelson, d/b/a Don Nelson Builders and Remodelers. The hearing record closed on March 10, 2006.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Department of Labor and Industry will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Nancy Leppink, Director of Legal Services, Minnesota Department of Labor & Industry, 443 Lafayette Road, St. Paul, MN 55155 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

STATEMENT OF ISSUE

Whether disciplinary action should be taken against Respondent Donald A. Nelson, d/b/a Don Nelson Builders and Remodelers for violation of Minn. Stat. §§ 45.027, subd. 1a and 326.91, subds. 1(2) and 1(6) for failing to respond to information requests from the Department, failing to appear at the Department as ordered, failing to complete contracts and failing to satisfy a judgment?

Based on all the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On January 31, 2006, a Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause and Statement of Charges was mailed to the Respondent at his last known address – Donald A. Nelson, 505 Whitewood Drive, Burnsville, MN 55337. The Notice scheduled a Prehearing Conference for March 10, 2006.

2. The Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause and Statement of Charges contains the following language, on page five:

1. Respondent's failure to appear at the prehearing conference may result in a finding that Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and that its proposed disciplinary action may be upheld.

3. The Respondent did not appear at the March 10, 2006, Prehearing Conference. He did not contact the Department, the Office of the Attorney General or the Administrative Law Judge to request a continuance. No Notice of Appearance was filed by the Respondent.

4. The allegations as set forth in the Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause and Statement of Charges are deemed proved and are incorporated into these Findings by reference.

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Labor and Industry have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 326.91 and 326.92.

2. The Respondent was given timely and proper notice of the Prehearing Conference in this matter, and the Department has complied with all procedural requirements of law and rule.

3. Under Minn. R. 1400.6000, the Respondent is in default as a result of his failure to appear at the scheduled Prehearing Conference.

4. Under Minn. R. 1400.6000, when a party defaults, the allegations and issues as set out in the Notice of Order for Hearing, Order for Prehearing Conference, Order to Show Cause and Statement of Charges may be taken as true and deemed as proven. The Administrative Law Judge therefore takes those allegations and issues as true, and they are deemed proven.

5. Based on the facts as set out in the Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause and Statement of Charges, the Respondent has violated Minn. Stat. §§ 45.027, subd. 1a by failing to respond to the Department requests for information and failing to appear at the Department as ordered, and violated Minn. Stat. § 326.91, subd. 1(2) and subd. 1(6), by performing in breach of contract for failure to complete contracts with two customers (a fraudulent, deceptive or dishonest practice) and by demonstrating financial irresponsibility by failing to satisfy a judgment. As a result, he is subject to discipline by the Minnesota Department of Labor and Industry.

6. An Order by the Commissioner of Labor and Industry imposing disciplinary action against the Respondent is in the public interest within the meaning of Minn. Stat. §§ 45.027, subd. 7(1) and 326.91, subd. 1.

Based on the Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that appropriate disciplinary action be taken against the Residential Building Contractor's License of Donald A. Nelson, individually and d/b/a Don Nelson Builders and Remodelers.

Dated this 6th day of April, 2006.

/s/ Richard C. Luis

RICHARD C. LUIS

Administrative Law Judge

Reported: Default